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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

NICHOLAS JAMES MCGUFFIN, as an individual and as guardian *ad litem*, on behalf of S.M., a minor,
 Plaintiffs,

Civil No. 6:20-cv-01163-MTK
 (Lead Case)

v.

MARK DANNELS, PAT DOWNING,
 SUSAN HORMANN, MARY KRINGS,
 KRIS KARCHER, SHELLY MCINNES,
 RAYMOND MCNEELY, KIP OSWALD,
 MICHAEL REAVES, JOHN RIDDLE, SEAN SANBORN, ERIC SCHWENNINGER,
 RICHARD WALTER, CHRIS WEBLEY,
 ANTHONY WETMORE, KATHY WILCOX,
 CRAIG ZANNI, DAVID ZAVALA, JOEL D. SHAPIRO AS ADMINISTRATOR OF THE ESTATE OF DAVID E. HALL, VIDOCQ SOCIETY, CITY OF COQUILLE, CITY OF COOS BAY, and COOS COUNTY,
 Defendants.

JOINT STATUS REPORT

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VIDOCQ SOCIETY,
Cross-Claimant,

v.

MARK DANNELS, PAT DOWNING,
SUSAN HORMANN, MARY KRINGS,
KRIS KARCHER, SHELLY MCINNES,
RAYMOND MCNEELY, KIP OSWALD,
MICHAEL REAVES, JOHN RIDDLE, SEAN
SANBORN, ERIC SCHWENNINGER,
RICHARD WALTER, CHRIS WEBLEY,
ANTHONY WETMORE, KATHY WILCOX,
CRAIG ZANNI, DAVID ZAVALA, JOEL D.
SHAPIRO AS ADMINISTRATOR OF THE
ESTATE OF DAVID E. HALL, VIDOCQ
SOCIETY, CITY OF COQUILLE, CITY OF
COOS BAY, and COOS COUNTY

Cross-Defendants.

NICHOLAS JAMES MCGUFFIN, as an
individual and as guardian *ad litem*, on behalf
of S.M., a minor,

Plaintiffs,

v.

OREGON STATE POLICE,

Defendant.

Civil Case No. 3:21-cv-01719-MTK
(Trailing Case)

Pursuant to this Court's order, the parties conferred on May 14, 2025, and report as follows.

I. Issue I:

This Court inquired about "what issues will remain for trial if the interlocutory appeal remains in place and those matters on appeal are stayed." Dkt. 364.

The parties, who could not reach agreement, report as follows:

Plaintiffs' Position. Plaintiffs' position is that the state-law claims and *Monell* claims would remain in the jurisdiction of this Court. Plaintiffs' position is that the jurisdiction of the Court of Appeals over any interlocutory appeal is limited to strictly legal issues collateral to the merits related to qualified immunity, and cannot as a matter of law extend to any of the state-law or municipal-liability claims.¹

Municipal Defendants' Position. The state-law claims and *Monell* claims are also stayed because they are "intertwined" with the claims based upon qualified immunity. For example, there is a federal malicious prosecutions claim and a state-law malicious prosecution claim; and there is a federal Fourth Amendment probable cause claim and a state law false arrest (lack of probable cause) claim. A finding of qualified immunity as to the federal claims will also resolve the state-law claims. As a matter of law, during an interlocutory appeal on the issue of qualified immunity, the lack of jurisdiction over the state law claims in the District Court exist when the claims are "inextricably intertwined" with the qualified immunity

¹ The parties discussed, and Plaintiffs thought had agreed, that this status report would not involve mini briefing or legal authorities about these positions and would not involve a preview of separate motions. So, while Plaintiffs disagree with the municipal defendants' inclusion of legal argument here they are not going to respond in this report. In so doing, Plaintiffs do not waive any objection to legal arguments made by the Municipal Defendants (or any other Defendants) to which Plaintiffs disagree.

claim such as when the granting of qualified immunity “necessarily resolves the pendent claims as well.” *Muir v. Decatur Cnty., Iowa*, 917 F3d 1050, 1053-54 (8th Cir 2019) [Holding that Court of Appeals had jurisdiction over *Monell* claims on appeal from a denial of qualified immunity: “We have jurisdiction over the municipal liability issue because we conclude Boswell committed no unconstitutional act, and that conclusion “necessarily resolves” the municipal liability issue”].

Vidocq Society’s Position. Vidocq recognizes that uncertainty exists to whether the Ninth Circuit currently has appellate jurisdiction over the individual Municipal and State Defendants with respect to the claims for which they have asserted qualified immunity, and that the issue of jurisdiction is being addressed pursuant to the Ninth Circuit’s recent Show Cause Order.

Assuming that the Ninth Circuit decides it has appellate jurisdiction with respect to the qualified immunity claims, the question as to what issues can proceed to trial during the appeal will depend on whether the Ninth Circuit decides to exercise its pendant appellate jurisdiction over other parties and claims that are related to (*i.e.* “inextricably intertwined with”) the claims over which the Court already is exercising appellate jurisdiction.

Walter’s Position. Walter joins in the position of the Vidocq Society, as stated above. Walter respectfully takes the position that all claims presented against Walter currently remain before the District Court but are inextricably intertwined with the claims asserted against the Appealing Defendants currently before the Ninth Circuit. A stay of the District Court proceedings for all parties would be justified pending resolution by the Ninth Circuit.

State Defendants' Position. To the extent the Court is asking the parties to identify the claims that are not subject to the interlocutory appeals, the State Defendants believe those claims are the *Monell* claims against the Municipal Defendants in the leading case and the state law claims against all defendants in both the leading and trailing cases.

The State Defendants' position is that the interlocutory appeal is not frivolous and therefore automatically stays the 42 U.S.C. § 1983 claims. The State Defendants further contend that the Court should stay the remaining claims in the sound exercise of its discretion. As will be discussed in the State Defendants Motion to Stay to be filed tomorrow, that contention is based on the substantial overlap between the appealed claims and the remaining claims, the complexity of the issues that would have to be resolved even on a subset of the original claims, and the likelihood of duplicative burdens on the Court, the parties, counsel, and witnesses.

II. Issue 2:

This Court required counsel to "also submit a preliminary schedule of the trial." Dkt. 364.

Because the parties were not able to reach agreement about the scope of trial if the interlocutory appeals stay in place, the parties are not able to reach agreement about a preliminary schedule of a trial that would proceed while any interlocutory appeal is pending. That said, Plaintiffs estimate their case would still be 2-3 weeks, and Defendants would take approximately the same. The parties will jointly work to streamline, as much as possible, any issues that are tried.

DATED: May 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2025, the foregoing JOINT STATUS REPORT was served on all parties of record through the Court's electronic filing system.

LOEVY & LOEVY

By /s/David B. Owens

One of Plaintiffs' attorneys